

1 2009 SEP 22 AM 10: 24 BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)

PBS&J Corporation)
William S. DeLoach)
Richard A. Wickett)
H. Michael Dye)
Maria M. Garcia)
Rosario Licata)
Shannan Ighodaro)
Sybil Thomas)
Lourdes Fernandez)
Reinaldo Fernandez)
Ana Quinones)
Victor Quinones)
James Breland)
Larry Boatman)

MUR 5903

4 GENERAL COUNSEL'S REPORT #2

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15	I. <u>ACTIONS RECOMMENDED</u>	

(1) Authorize this Office to enter into conciliation negotiations with PBS&J Corporation ("PBSJ") prior to a finding of probable cause to believe; (2) approve the proposed conciliation agreement; and (3) take no further action as to William Scott DeLoach, Richard A. Wickett, H. Michael Dye, Maria M. Garcia, Rosario Licata, Shannan Ighodaro, Sybil Thomas, Lourdes Fernandez, Reinaldo Fernandez, Ana Quinones, Victor Quinones, James Breland, and Larry Boatman and send cautionary letters.

II. INTRODUCTION

This matter was generated by a _____
complaint, both of which involved allegations concerning knowing and willful violations of 2 U.S.C. § 441f by PBSJ as a corporate entity and its officers. The Commission found reason to believe that: (1) PBSJ knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f; (2) H. Michael Dye, Maria Garcia, Rosario Licata, William Scott DeLoach, and Richard Wickett, who were PBSJ officers and managers, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f; and (3) conduits Shannon Ighodaro, Sybil Thomas, Lourdes Fernandez, Reinaldo Fernandez, Ana Quinones, Victor Quinones, James Breland, and Larry Boatman violated 2

1 U.S.C. § 441f. See MUR 5903, Certification dated Sept. 12, 2007; MUR 5822 (William Scott
2 DeLoach), Certification dated Sept. 25, 2006. The Commission unanimously voted to pursue
3 this matter although all of the alleged violations occurred between 1990 and 2004.¹ The
4 Commission approved the analysis in the First General Counsel's Report, which stated that based
5 upon the doctrine of fraudulent concealment and facts demonstrating that PBSJ disguised
6 reimbursed contributions as payments for "mileage reimbursement" and "business
7 development," the statute of limitations would be equitably tolled until April 1, 2010,² five years
8 from the approximate date on which the Department of Justice learned of the allegations relating
9 to the illegal contributions. See MUR 5903, First General Counsel's Report ("FGCR") at 7.

10 The investigation revealed that PBSJ made direct corporate contributions to federal
11 candidates and engaged in an institutionalized, corporate-wide practice of reimbursing employee
12 contributions. We were unable to reach out to witnesses or respondents until June 2008. From
13 September 2007 through June 2008, we held this case in abeyance at the request of the
14 Department of Justice, which prosecuted a number of PBSJ's senior executives criminally.³
15 First, senior executives at PBSJ established two bank accounts, designated as "Out of State

¹ At the reason to believe stage, the Commission agreed that the 9th Circuit decision in *FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996) ("*Williams*"), which refused to toll the statute of limitations under 2 U.S.C. § 2462, was decided incorrectly and that the facts in this matter were distinguishable from *Williams* given that PBSJ engaged in an extensive scheme to disguise and conceal its illegal contributions. See FGCR at 8-10; MUR 5903, Certification dated Sept. 11, 2007. Furthermore, we have discovered that the 11th Circuit, which would likely have jurisdiction over any suit brought against PBSJ, declined to follow *Williams* on other grounds and held that the statute of limitations cannot bar the government's equitable claims under § 2462 when the government is acting in its official enforcement capacity. See *U.S. v. Banks*, 115 F.3d 916, 919 n.60 (11th Cir. 1997). While the 11th Circuit did not address *Williams*' holding concerning the doctrine of equitable tolling for fraudulent concealment because the issue was not raised in *Banks*, the departure in *Banks* from the 9th Circuit's interpretation of § 2462 relating to equitable claims suggests that the 11th Circuit would be open to reexamination of the *Williams* ruling on fraudulent concealment as well.

² According to the criminal pleadings, Complainant Maria Garcia first informed the Department of Justice of the embezzlement of PBSJ funds and illegal contribution schemes on April 20, 2005. Declaration of Benson Weintraub, Esq., *United States v. Garcia*, Case No. 06-20583 (S.D. Fla. Feb. 14, 2007). However, out of an abundance of caution, we are using April 1, 2010, not April 20, 2010, as the date on which the statute of limitations would expire in this matter.

³ See *infra* note 22.

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1 PAC" accounts but comprised of corporate funds, to make direct contributions totaling \$9,750 to
2 federal candidates in violation of 2 U.S.C. § 441b(a). In addition, PBSJ reimbursed \$30,500 in
3 federal political contributions made by officers and directors, using falsified expense reports, the
4 corporate account of a wholly owned subsidiary, and bonus payments to conceal the
5 reimbursements in violation of 2 U.S.C. §§ 441f and 441b(a).⁴ The investigation also revealed
6 that the practice of making illegal contributions involved officers at all levels of the company
7 and was not limited to a few rogue employees. Corporate records and memoranda dating back to
8 the 1980s informed PBSJ officers that the reimbursement of contributions was illegal and this,
9 combined with PBSJ's efforts to conceal its illegal contribution schemes, demonstrate that PBSJ
10 knowingly and willfully violated sections 441b and 441f.

11 Having completed the investigation, we now recommend that the Commission attempt to
12 conciliate this matter with PBSJ prior to a finding of probable cause to believe and approve the
13 proposed conciliation agreement. With respect to the individual conduit respondents, we
14 recommend that the Commission take no further action but issue the appropriate cautionary
15 letters. We also recommend that the Commission take no further action but issue the appropriate
16 cautionary letters as to the senior officers of PBSJ, H. Michael Dye, Richard Wickett, and
17 William Scott DeLoach, given that they have already been criminally prosecuted and cooperated
18 with us during the investigation. Finally, we recommend that the Commission take no further
19 action but issue the appropriate cautionary letters to Maria Garcia and Rosario Licata, who were
20 subordinates of Richard Wickett and William Scott DeLoach, acted at their superiors' direction,
21 and were subject to criminal prosecution.

⁴ Although the amounts in violation for both the direct corporate contributions and reimbursed contributions made to federal candidates may appear to be relatively small, the federal contributions comprised a small portion of the total illegal contributions made to state and local candidates, which was estimated at almost \$200,000. See Response to Presentence Investigation Report, *United States v. Wickett*, Case No. 07-20145, at 13 (S.D. Fla. March 11, 2008).

III. SUMMARY OF THE RECORD

A. PBSJ BACKGROUND

PBSJ is an employee-owned engineering and consulting firm based in Florida.⁵ The company was founded in 1960 and experienced rapid growth through the 1980's and 1990's, registering as a public company with the Securities and Exchange Commission in 2000.⁶ Today, there are almost 4000 employees in 80 offices throughout the U.S.⁷

PBSJ is structured so that PBS&J Corp., the parent company of numerous subsidiaries, is a holding company that mainly issues stock.⁸ One of its subsidiaries, PBS&J, Inc. is the main operating company, which provides engineering services and has a large number of officers.⁹ Another smaller subsidiary, Seminole Development Corp. ("Seminole"), was formed as a real estate holding company but became inoperative after a period of time.¹⁰

In 1985, PBSJ first began making political contributions to state and local candidates by establishing its Florida Citizens and Taxpayers PAC ("CATPAC"), which was a political committee registered in Florida.¹¹ By 2000, PBSJ established political committees in seven other states,¹² and finally registered a federal committee with the Commission in April 2003. In our interviews with numerous PBSJ officers, many of these individuals discussed the importance of making political contributions for the company and stated that the company needed to

⁵ See Response of the PBSJ Corporation to Complaint ("PBSJ Response to Complaint") at 1.

⁶ See Harry Michael Dye Report of Investigation ("Dye ROI") at 6; Deposition of Richard Wickett (Wickett Dep.) at 87. Defendant's Supp. Sent. Mem., *United States v. Richard Wickett*, Case No. 07-20145, at 2 (S.D. Fla. Apr. 28, 2008) ("Wickett Supp. Mem.").

⁷ PBSJ Response to Complaint at 1.

⁸ See Organizational Chart, Wickett Dep. Ex. 4, PBPC0030387-393.

⁹ See *id.*; Wickett Dep. at 23-24; John Zumwalt Report of Investigation ("Zumwalt ROI") at 2.

¹⁰ See Organizational Chart, *supra* note 8; Wickett Dep. at 24.

¹¹ Mem. from Mike Dye, March 1, 1990, Wickett Dep. Ex. 24, PBPC0395720.

¹² Response of PBSJ Corp. to Subpoena ("PBSJ Subpoena Response") at 9.

1 promote its presence in the community so that it could obtain more business.¹³ Many of these
2 officers believed that it was part of their duty as officers to make contributions on behalf of the
3 company,¹⁴ and some believed that making contributions was necessary to move up in the
4 company.¹⁵

5 **B. DISCOVERY OF EMBEZZLEMENT AND CORPORATE CONTRIBUTION**
6 **SCHEMES**

7
8 In March 2005, internal auditors at PBSJ discovered that William Scott DeLoach
9 (hereinafter "Scott DeLoach"), who was serving as the Chief Financial Officer ("CFO"), had
10 embezzled \$36 million from the company.¹⁶ Assisting Mr. DeLoach in the embezzlement were
11 two subordinates of Mr. DeLoach: Maria Garcia, an accounting manager and the complainant in
12 this matter, and Rosario Licata, also an accounting manager. After discovery of the
13 embezzlement, PBSJ established an independent audit committee and retained outside auditors to
14 conduct an investigation of the misappropriated funds.¹⁷ During this internal investigation, the
15 auditors came to discover that officers and directors of PBSJ used corporate funds to make direct
16 state and federal campaign contributions with corporate funds and also reimbursed employees for
17 making state and federal contributions.¹⁸

18 The FBI opened an investigation in 2006. The investigation revealed, and we have
19 confirmed, that multiple illegal contribution schemes occurred at PBSJ. See PBSJ Illegal

¹³ Zumwalt ROI at 3; Dye ROI at 2, 7; Randy L. Larsen Report of Investigation ("Larsen ROI") at 3; James Breland Report of Investigation ("Breland ROI") at 3-4; John S. Shearer Report of Investigation ("Shearer ROI") at 2; Larry A. Boatman Report of Investigation ("Boatman ROI") at 3-4; Deposition of William Scott DeLoach ("DeLoach Dep.") at 33.

¹⁴ DeLoach Dep. at 33; Larson ROI at 3; Breland ROI at 4.

¹⁵ Alfred R. White Report of Investigation ("White ROI") at 2; Walter R. Karasiewicz Report of Investigation ("Karasiewicz ROI") at 3.

¹⁶ PBSJ Response to Complaint at 2.

¹⁷ William Pruitt Report of Investigation ("Pruitt ROI") at 2-4.

¹⁸ See, e.g., Pruitt ROI at 2, 4; PBSJ Subpoena Response at 7-8.

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1 Contribution Scheme Chart, Attachment A.¹⁹ First, from about the mid-1980's through
2 approximately 2004, officers and directors at PBSJ reimbursed employees for making federal
3 and state contributions with corporate funds. Second, in 1990, officers and directors established
4 two corporate accounts designated as the "Out-of State PAC" accounts, which they used to make
5 direct state and federal contributions until approximately 1996. Third, from 1993-2005, Mr.
6 DeLoach, without the knowledge of other PBSJ officers, used some of the funds that he
7 embezzled to make his own campaign contributions and reimbursed subordinates for making
8 contributions to federal candidates.²⁰ Based upon the findings of the FBI investigation, the U.S.
9 Attorney's Office prosecuted and convicted Messrs. Dye, Wickett, and DeLoach.²¹ The criminal
10 proceedings concluded in May 2008 when the last of the criminal defendants, Mr. Wickett, was
11 finally sentenced.²²

¹⁹ See also Information, *U.S. v. Dye*, 07-CR-20144 (S.D. Fla. filed March 9, 2007), Attachment 3 to First General Counsel's Report ("Dye Information"); Indictment, *U.S. v. Wickett*, 07-CR-20145 (S.D. Fla. filed March 9, 2007), Attachment 4 to First General Counsel's Report ("Wickett Indictment"); Agreed Statement of Facts, *U.S. v. William Scott DeLoach*, 06-CR-20583 (S.D. Fla. filed Sept. 28, 2006).

²⁰ See DeLoach Dep. at 15; William Scott DeLoach Response to Subpoena ("DeLoach Subpoena Response") at 6.

²¹ Both Dye and Wickett pled guilty for violating 18 U.S.C. § 371 for conspiracy to make false statements relating to fraudulent concealment and diversion of PBSJ corporate funds to make illegal contributions to federal candidates. See Judgment, *U.S. v. Dye*, 07-CR-20144 (S.D. Fla. Aug. 6, 2007) ("Dye Judgment"); Judgment, *U.S. v. Wickett*, 07-CR-20145 (S.D. Fla. May 20, 2008) ("Wickett Judgment"). DeLoach pled guilty for violating 18 U.S.C. § 1349 for conspiracy to commit mail fraud relating to the embezzlement of PBSJ funds and 2 U.S.C. § 441f for the unlawful reimbursement of federal campaign contributions. See Judgment, *U.S. v. DeLoach*, 06-CR-20583 (July 19, 2007) ("DeLoach Judgment").

C. OUT OF STATE PAC AND MAKING OF CORPORATE CONTRIBUTIONS

Although PBSJ made contributions to state and local candidates in Florida through its state committee, CATPAC, PBSJ employees received requests to make contributions to candidates outside of Florida. Accordingly, executives at PBSJ sought to create a mechanism through which they could make contributions to these out of state candidates.²³

Because PBSJ had not yet registered any political committees in jurisdictions outside of Florida, PBSJ officers decided to open a bank account that would be used to make contributions out of state until PBSJ registered committees in those jurisdictions.²⁴ In 1990, Michael Dye, then the Executive Vice President, instructed Richard Wickett, then the Controller, to open a PBSJ bank account "out of Fla. (without the filings)."²⁵ Between 1990 and 1991, Dye and Wickett, with the assistance of the Accounting Manager, Rosario Licata, opened two accounts designated as the "Out of State" PAC accounts with Sun Bank and North Carolina National Bank ("NCNB").²⁶ Despite the name, the Out of State PAC was not actually a political committee registered with any federal or state agency; they were merely corporate bank accounts.²⁷ Bank records listed William Randolph as the Chairman, Michael Dye as the Treasurer, and Richard

²³ On a few isolated instances, documents show that PBSJ used CATPAC funds to make contributions to federal candidates, including a \$1,000 contribution to the Presidential Campaign of Dick Gephardt and a \$100 contribution to Javier Souto for Congress Committee in 1992. See Mem. from Beth Ann Rufo, July 25, 1990, Wickett Dep. Ex. 25, PBPC0000460466; Check No. 1061, Wickett Dep. Ex. 27, PAC 01102. While the making of these contributions could have triggered political committee status for the CATPAC under the Act, see 2 U.S.C. § 431(4), see also MUR 5944 (International Brotherhood of Electrical Workers): AO 2003-29 (National FOP PAC), we did not pursue this issue, which was neither alleged in the complaint in order to focus on the more significant violations of sections 441b and 441f at issue in this matter.

²⁴ Wickett Dep. at 160.

²⁵ Handwritten Notes, Wickett Dep. Ex. 30, PBPC0183210.

²⁶ Dye Information at 5; Wickett Indictment at 5.

²⁷ Wickett Dep. at 160.

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Wickett as Secretary.²⁸ Documents show that in 1994, Scott DeLoach, then the Assistant Controller, was added to the signature card for the NCNB account.²⁹

Between 1990 and 1996, PBSJ made seven federal contributions, totaling \$9,750, through checks drawn from the Out of State PAC accounts as set forth below.

Contributions Made Through Out of State PAC

Contributor/Payor	Committee	Date	Amount
Out-Of-State PAC	Friends of Bob Graham Committee	08/17/1991	\$500.00
Out-Of-State PAC	Comm. to Elect Cynthia McKinney	07/06/1992	\$250.00
Out-Of-State PAC	Bob Carr for Congressman	04/12/1994	\$1,000.00
Out of state PAC	Adam Smith PAC (ex-Sen Connie Mack, R-FL)	05/29/1996	\$1,000.00
Out-Of-State PAC	Florida Win In 96	08/27/1996	\$5,000.00
Out-Of-State PAC	Alice L. Hastings Campaign	09/27/1996	\$1,000.00
Out-Of-State PAC	Carrie Meek Campaign	09/27/1996	\$1,000.00
Total			\$9,750.00

The company funded the Out of State PAC accounts with corporate funds from PBSJ, Inc.'s operational account.³⁰ The company appears to have ceased using the accounts to make political contributions by the late 1990's.

The investigation showed that PBSJ's officers took efforts to conceal contributions made through the Out of State PAC accounts' checks. First, officers decided to remove the corporate name and address from the checks so that there was no information identifying the contributor on the checks.³¹ In addition, while corporate funds from PBSJ's operational account were deposited

²⁸ NCNB Certification, Wickett Dep. Ex. 28, PBPC0393930.

²⁹ See NationsBank Signature Card, DeLoach Ex. 8, PBPC0120204.

³⁰ Wickett Dep. at 158; DeLoach Dep. at 62.

³¹ DeLoach Dep. at 60-61 (stating that Wickett and Dye did not want identifying information on Out of State PAC checks due to the illegality of the contributions); Wickett Dep. at 161-162; Dye Information at 3-5; Wickett

1 into the Out of State PAC accounts, these accounts never appeared on PBSJ's balance sheets. In
2 a note to his secretary, Mr. Wickett instructed her to keep the accounts "out of PBSJ books."³²
3 When we questioned Mr. Wickett as to why the Out of State PAC accounts were not included in
4 PBSJ's balance sheets, Mr. Wickett responded that these accounts were kept off the books
5 because they were "zero balance account[s]," in which funds were deposited only to the extent
6 they would cover a check drawn on the accounts.³³ Mr. Wickett stated that he chose to establish
7 the accounts as zero balance accounts "[b]ecause I did not want money to sit around in
8 something while we were in the process of opening up PAC accounts outside of the State of
9 Florida."³⁴

10 As a result, independent auditors never had an opportunity to review these accounts. Mr.
11 William Pruitt, who led the independent audit committee in 2005 and is currently the Lead
12 Independent Director of PBSJ's Board of Directors, explained that there should be a record of
13 zero balance accounts on company books for accounting purposes.³⁵ According to Mr. Pruitt,
14 although auditors generally do not review PAC accounts, if they discover that corporate funds
15 were deposited into a PAC account, then they would look into such an account.³⁶

16 _____
17 _____
18 _____

Indictment at 2-5. On two checks, an unknown person(s) handwrote Mr. Wickett's name as the contributor. See Wickett Dep. Ex. 40, PBPC0183097; Wickett Dep. Ex. 41, PBPC0378193. One of the checks includes only a misspelled version of Mr. Wickett's name, "Richard Wicker," and the other check provides his correct name and PBSJ's address, without any reference to PBSJ, and identifies him as a "Consultant." *Id.*; Wickett Dep. at 187.

³² See Handwritten Notes, *supra* note 25.

³³ Wickett Dep. at 154-155.

³⁴ Wickett Dep. at 160.

³⁵ Pruitt ROI at 3.

³⁶ *Id.*

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____

8 While only four officers, Messrs. Randolph, Dye, Wickett, and DeLoach, were formally
9 listed on bank documents, the investigation showed that other officers at PBSJ had knowledge
10 about the Out of State PAC prior to the discovery of the embezzlement in 2005 and were
11 involved in making contributions through these accounts. According to Scott DeLoach,
12 members of the PBSJ Corp. and PBSJ, Inc. boards had knowledge about the Out of State PAC.⁴¹
13 Richard Karasiewicz, who became a member of the PBSJ, Inc. Board in 1991, acknowledged
14 that he presented an Out of State PAC check for the Adam Smith PAC, which was established
15 for former Senator Connie Mack, in 1996.⁴² Current CEO John Zumwalt also discussed making
16 a Georgia state contribution through the Out of State PAC in an email to a staff member in 1997,
17 when PBSJ did not have a Georgia PAC.⁴³

37 _____
38 _____
39 _____
40 _____

⁴¹ DeLoach Dep. at 46.

⁴² See Check No. 1053, PBPC0183107; Wickett Dep. Ex. 39, PAC02251; Karasiewicz ROI at 2.

⁴³ Email from John Zumwalt, May 28, 1997, PBPC000511, PBPC000509. During his interview, Mr. Zumwalt claims that he was not familiar with the Out of State PAC until discovery of the embezzlement. When we showed him this email, he claimed that he was merely retyping notes from his conversation with a PBSJ employee, Michael Buhler. Despite Mr. Zumwalt's explanation, this email clearly demonstrates that others at PBSJ besides the four individuals on the signature cards were aware of this PAC account.

D. REIMBURSEMENT OF CONTRIBUTIONS WITH CORPORATE FUNDS

Beginning as early as the 1980s, PBSJ officers engaged in a practice of reimbursing employees for political contributions.⁴⁴ Given the prevalence of reimbursements, many officers had a general expectation that they would receive reimbursement when making contributions.⁴⁵ While most of these contributions were for state and local candidates, between 1992 and 2004, PBSJ reimbursed officers for \$30,500 in federal contributions with corporate funds as set forth below.

Reimbursed Contributions

Contributor/Payor	Committee	Date	Amount
Dye, Michael	Americans for Harkin	02/25/1992	\$1,000.00
Dye, H M	Clinton/Gore 96 Primary Committee Inc.	06/22/1995	\$1,000.00
Karasiewicz, Walter R	Friends of Bob Graham Committee	04/08/1997	\$1,000.00
Gonzalez, Jose B.	Bud Shuster for Congress Committee	07/18/1997	\$500.00
Paulsen, Robert J.	Bud Shuster for Congress Committee	07/25/1997	\$500.00
Shearer, John S	Friends of Bob Graham Committee	10/29/1998	\$500.00
Shearer, John S	Bill McCollum for U.S. Senate	11/29/1998	\$500.00
DeLoach, William, Mr.	Linda Chapin for Congress	03/08/2000	\$500.00
Squillante, Judith	Linda Chapin for Congress	03/08/2000	\$500.00
Wickett, Richard A	Linda Chapin for Congress	03/08/2000	\$500.00
Wickett, Richard A	Linda Chapin for Congress	09/05/2000	\$500.00
Breland, James	Friends of Max Cleland for the U.S. Senate Inc.	03/27/2002	\$2,000.00
DeLoach, William	Republican Party of Florida	08/08/2002	\$500.00

⁴⁴ See, e.g., Dye ROI at 2; Larson ROI at 2.

⁴⁵ Wickett Dep. at 44, 74; Dye ROI at 5.

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Contributor/Payor	Committee	Date	Amount
Boatman, Larry	Alaskans for Don Young	01/28/2003	\$500.00
DeLoach, William S.	Erskine Bowles for US Senate	03/09/2004	\$2,000.00
Wickett, Richard A	Erskine Bowles for US Senate	03/09/2004	\$1,000.00
DeLoach, William S.	Americans for a Republican Majority PAC	03/09/2004	\$5,000.00
DeLoach, Williams S CPA	Democracy Believers PAC	09/17/2004	\$5,000.00
DeLoach, William S.	Martinez for Senate	10/05/2004	\$2,000.00
Wickett, Richard	Martinez for Senate	10/07/2004	\$500.00
DeLoach, William	Republican Party of Florida	10/29/2004	\$5,000.00

Total \$30,500.00

PBSJ executed these reimbursements in one of three ways: 1) through falsified expense reports; 2) through checks drawn on the account of Seminole Development Corp., a PBSJ subsidiary; and 3) through the bonus compensation system.

1. Reimbursements Through Falsified Expense Reports

Officers obtained reimbursements from PBSJ by submitting falsified expense reports and receiving corporate checks for these false expenses.

1 _____⁴⁷
2 _____
3 _____
4 _____⁴⁸
5 _____⁴⁹

6 In addition, in March 2002, James Breland, a District Director and a PBSJ, Inc. Board
7 member, submitted a contribution request form to make a \$2,000 contribution to the campaign of
8 U.S. Senator Max Cleland.⁵⁰ However, because PBSJ did not have a federal committee at the
9 time, the contribution request form contained a handwritten note indicating "Out of State (not
10 registered anywhere) - may be a problem or personal check to be reimbursed."⁵¹ Mr. Breland's
11 supervisor, Charles "Skip" Homan, then approved the request and told Mr. Wickett's secretary
12 that PBSJ CEO John Zumwalt stated that Mr. Wickett could approve the request in Mr.
13 Zumwalt's absence.⁵² Subsequently, Mr. Wickett submitted a check request for Mr. Breland
14 indicating that the reason for such request was mileage reimbursement.⁵³ On March 26, 2002,
15 Mr. Breland received a corporate check for \$2,000.⁵⁴ Commission records indicate that Mr.
16 Breland made \$2,000 a contribution to Senator Cleland on March 27, 2002.

47 _____
48 _____
49 _____

⁵⁰ See Facsimile Transmission from Skip Homan, dated March 15, 2002 at PAC04239.

⁵¹ See Contribution Request Form, dated March 15, 2002, at PAC04239.

⁵² *Id.* at PAC04237.

⁵³ See Wickett Supp. Mem. at 12.

⁵⁴ See PBSJ Check No. 0011202, PBPC026692.

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1 Similarly, Larry Boatman, who was then a senior Vice President and Regional Manager,
2 obtained reimbursement for a contribution of \$500 to Congressman Don Young in 2003.⁵⁵ Mr.
3 Boatman received reimbursement through a corporate check, which falsely indicated that the
4 check was for a business development expense.⁵⁶ According to Mr. Boatman, the request to
5 attend the fundraiser for Don Young and make a contribution came from the office of Richard
6 Wickett;⁵⁷ however, according to Mr. Wickett, Mr. Zumwalt approved the contribution request,
7 and Mr. Wickett executed Mr. Zumwalt's orders by preparing the check request.⁵⁸ Although
8 Mr. Zumwalt acknowledged that he had stated that \$500 was the correct amount for the Young
9 contribution, Mr. Zumwalt claimed that he did not think about how the company was going to
10 legally make the contribution.⁵⁹ Mr. Zumwalt maintains that he had no knowledge of the
11 reimbursement until PBSJ's internal investigation. However, a phone message indicates that Mr.
12 Zumwalt did discuss how PBSJ did not have a federal committee to make the contribution.⁶⁰
13 According to the message, Mr. Zumwalt stated, "500 is correct. The only PAC could be Federal
14 and we don't have that, go meet the man and try to arr. a mtg. in D.C."⁶¹
15 In sum, the evidence gathered from the investigation indicates that the following federal
16 contributions were reimbursed through the falsified expense reports.

⁵⁵ See Larry Boatman Report of Investigation ("Boatman ROI") at 3; see also Dye Information at 9-10; Wickett Indictment at 10.

⁵⁶ Check No. 243, Wickett Dep. Ex. 44, at PBPC003562.

⁵⁷ Boatman ROI at 2.

⁵⁸ Wickett Dep. at 199-200.

⁵⁹ Zumwalt ROI at 7.

⁶⁰ Phone Message from John Zumwalt, Wickett Dep. Ex. 44 at PBPC003568.

⁶¹ *Id.*

Contributor/Payor	Committee	Date	Amount
Shearer, John S	Friends of Bob Graham Committee	10/29/1998	\$500.00
Shearer, John S	Bill McCollum for U.S. Senate	11/29/1998	\$500.00
Breland, James	Friends of Max Cleland for the U.S. Senate Inc.	03/27/2002	\$2,000.00
Boatman, Larry	Alaskans for Don Young	01/28/2003	\$500.00

2. Reimbursements Through Seminole Development Corp.

PBSJ officers also received reimbursement for political contributions through checks drawn on the corporate account of Seminole. Seminole, which PBSJ operated as an investment company, owned assets but did not write checks for normal operating expenses.⁶² However, we identified more than 50 checks payable to senior officers of PBSJ from 1990-1996.⁶³ Although most of the checks were for reimbursement of state candidates, PBSJ officers received reimbursements for at least three federal contributions totaling \$3,000 with Seminole funds, which are set forth below.⁶⁴

Contributor/Payor	Committee	Date	Amount
Dye, Michael	Americans for Harkin	02/25/1992	\$1,000.00
Dye, H M	Clinton/Gore 96 Primary Committee Inc.	06/22/1995	\$1,000.00
Karasiewicz, Walter R	Friends of Bob Graham Committee	04/08/1997	\$1,000.00

⁶² DeLoach Dep. at 37.

⁶³ See List of Seminole Checks, PAC 04234-235.

⁶⁴ See Dye Information at 6-7; Wickett Dep. at 173, 181 (describing reimbursement of \$1,000 contribution to Senator Tom Harkin and \$1,000 contribution to Clinton-Gore Campaign); Karasiewicz ROI at 2 (stating he was reimbursed with Seminole check for \$1,000 contribution to Senator Bob Graham).

1 Numerous witnesses, including CEO John Zumwalt, directly admitted that Seminole
2 checks that were made payable to them were reimbursement checks for political contributions,⁶⁵
3 and almost all of the senior officers contacted, admitted that there was no legitimate reason why
4 they would be receiving a check from Seminole, other than reimbursement.⁶⁶ According to Scott
5 DeLoach, "[t]here was no real reason for having a check [from Seminole] to the officer of a
6 company."⁶⁷ Furthermore, because Seminole was a subsidiary of the operating company, PBSJ,
7 Inc., senior officers "thought it was a better way to mask a reimbursement."⁶⁸

8 3. Reimbursements Through the Bonus System

9 The third way that PBSJ officers obtained reimbursements for political contributions was
10 through bonus checks. The investigation revealed that from about 1997, Mr. Wickett and other
11 senior officers maintained charts reflecting bonus calculations and made adjustments for
12 reimbursements of political contributions.⁶⁹ According to Alfred White, PBSJ's former
13 Controller and Associate Vice President, an outside auditor would not have been able to detect
14 that these adjustments were for reimbursements,⁷⁰ given that reimbursements were entered into
15 the calculations as adjustments to bonuses with "no documentation."⁷¹

⁶⁵ See Zumwalt ROI at 5; Squillante ROI at 2; DeLoach Dep. at 83; Wickett Dep. at 193-194.

⁶⁶ See, e.g. Wickett Dep. at 194; DeLoach Dep. at 37; Dye ROI at 4; Zumwalt ROI at 5. *But see* Walter Karasiewicz ROI at 3 (claiming that he could have received a Seminole check for legitimate reasons relating to real estate but not disputing that such check could have been for a contribution reimbursement).

⁶⁷ DeLoach Dep. at 37.

⁶⁸ *Id.*

⁶⁹ See, e.g. DeLoach Dep. Ex. 27, PBPC0382245, DeLoach Dep. Ex. 28, PBPC0395038; DeLoach Dep. Ex. 29, PBPC 0395037; DeLoach Dep. Ex. 30, PBPC0382227; White ROI at 2-3; *see also* Charles Homan Report of Investigation ("Homan ROI") at 6 (stating that political contributions made by employees may have entered into judgments about employee bonuses).

⁷⁰ White ROI at 3.

⁷¹ DeLoach Dep. at 41, 86-87. For examples of actual bonus adjustments made for political contribution reimbursements, *see, e.g.* DeLoach Dep. Ex. 27, PBPC0382245, Ex. 28, PBPC0395038; Ex. 29, PBPC 0395037; Ex. 30, PBPC0382227. *See also* Wickett Dep. at 214, 221-223 (acknowledging that while reimbursements were made through bonuses and that adjustments made to the bonus calculations could have been for reimbursements, reimbursements for bonuses were generally not documented).

1 Mr. Dye admitted that he told employees that while making contributions was voluntary,
2 they should use portions of their bonuses to make contributions if they wanted to help grow the
3 company.⁷² In or about June 2000, Michael Dye arranged for certain officers and directors to
4 receive a special "mid-year bonus" and told these individuals that they would be expected to use
5 the bonus money towards funding PBSJ's state PACs.⁷³ In fact, according to numerous
6 witnesses, Mr. Dye instructed the officers and directors to bring their check books to a board
7 meeting to write checks to PBSJ's PACs, using a portion of their bonuses.⁷⁴

8 While many of the reimbursements through bonuses were for state and local candidates,
9 officers of PBSJ received reimbursements for 11 federal contributions totaling \$22,500, most
10 likely through the bonus system. Scott DeLoach testified that he was reimbursed for seven
11 contributions made to federal committees through the bonus system.⁷⁵ One of these
12 contributions was made to Linda Chapin for Congress on March 8, 2000 for \$500. Given that
13 Judith Squillante and Richard Wickett also made \$500 contributions to this committee on the
14 same date, Ms. Squillante and Mr. Wickett were also likely reimbursed through the bonus system
15 for these contributions. While neither Ms. Squillante nor Mr. Wickett could specifically recall
16 being reimbursed for these particular contributions, they acknowledged that they received
17 reimbursements generally for their political contributions.⁷⁶ Similarly, given that Mr. DeLoach
18 admitted that he was reimbursed through the bonus system for the contributions to Erskine
19 Bowles for U.S. Senate and Martinez for Senate and Mr. Wickett also made contributions to
20 these candidates on or around the same time as Mr. DeLoach, we determined that Mr. Wickett

⁷² Dye ROI at 7.

⁷³ Wickett Indictment at 8-9; Wickett Dep. at 189-190; Zumwalt ROI; Larson ROI at 4.

⁷⁴ Zumwalt ROI at 3; Squillante ROI at 2. .

⁷⁵ DeLoach Dep. 75-76.

⁷⁶ Squillante ROI at 2-3; Wickett Dep. at 113.

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1 was reimbursed for his contributions to Erskine Bowles and Mel Martinez through the bonus
2 system.

3 In sum, the evidence gathered from the investigation indicates that the following federal
4 contributions were reimbursed through the bonus system.

Contributor/Payor	Committee	Date	Amount
DeLoach, William, Mr.	Linda Chapin for Congress	03/08/2000	\$500.00
Squillante, Judith	Linda Chapin for Congress	03/08/2000	\$500.00
Wickett, Richard A	Linda Chapin for Congress	03/08/2000	\$500.00
DeLoach, William	Republican Party of Florida	08/08/2002	\$500.00
DeLoach, William S.	Erskine Bowles for US Senate	03/09/2004	\$2,000.00
Wickett, Richard A	Erskine Bowles for US Senate	03/09/2004	\$1,000.00
DeLoach, William S.	Americans for a Republican Majority PAC	03/09/2004	\$5,000.00
DeLoach, Williams S CPA	Democracy Believers PAC	09/17/2004	\$5,000.00
DeLoach, William S.	Martinez for Senate	10/05/2004	\$2,000.00
Wickett, Richard	Martinez for Senate	10/07/2004	\$500.00
DeLoach, William	Republican Party of Florida	10/29/2004	\$5,000.00

5 **4. Reimbursement with Embezzled Funds**

6 In addition to the corporate wide scheme involving \$30,500 in reimbursed contributions,
7 the investigation found that Scott DeLoach, the former CFO, reimbursed a number of
8 subordinates with embezzled funds totaling \$23,419. In or about 1993, with the assistance of his
9 subordinates, Maria Garcia and Rosario Licata,⁷⁷ managers in the accounting department,
10 DeLoach began to embezzle from the company and deposited such funds in personal bank
11 accounts that he opened. In about 2003 through approximately March 2005, DeLoach

⁷⁷ Both Garcia and Licata were criminally prosecuted for their roles in the embezzlement scheme and sentenced. See Judgment, *U.S. v. Maria Garcia*, 06-CR-20583 (July 31, 2007) (imprisonment of 63 months and restitution in the amount of \$9,483,247.01); Amended Judgment, *U.S. v. Rosario Licata*, 06-CR-20583 (Aug. 3, 2007) and Order Granting Government's Mot. for Reduction of Sentence (May 12, 2008) (imprisonment of 30 months and restitution in the amount of \$6,791,187.58).

1 transferred embezzled funds to a secret bank account, named "PBSJ, Inc. PAC," which, despite
2 the name, was not a true company account nor a true PAC account.⁷⁸ DeLoach used checks from
3 the PBSJ, Inc. PAC to reimburse political contributions made by his subordinates.⁷⁹ The
4 evidence indicates that Mr. DeLoach reimbursed the following contributions:

Contributor	Committee	Date	Amount
Garcia, Maria	Erskine Bowles for US Senate	03/09/2004	\$1,000.00
Garcia, Maria	Democracy Believers PAC	09/17/2004	\$5,000.00
Fernandez, Lourdes	Martinez for Senate	10/05/2004	\$2,000.00
Fernandez, Reinaldo	Martinez for Senate	10/05/2004	\$2,000.00
Igodarho, Shannan	Martinez for Senate	10/04/2004	\$2,000.00
Licata, Rosario	Erskine Bowles	03/09/2004	\$1000.00
Licata, Rosario	Democracy Believers PAC	09/17/2004	\$5000.00
Quinones, Ana	Martinez for Senate	10/05/2004	\$2,000.00
Quinones, Victor	Martinez for Senate	10/05/2004	\$2,000.00
Thomas, Sybil	Erskine Bowles	03/09/2004	\$419.00
Thomas, Sybil	Martinez for Senate	10/04/2004	\$1,000.00
		Total	\$23,419.00

5
6 Mr. DeLoach stated that PBSJ's illegal reimbursement scheme, which began in the
7 1980's and predated his scheme, which started around 1993, was a factor in his decision to steal
8 funds from PBSJ. Mr. DeLoach believed that he would have some leverage over his superiors,
9 Messrs. Wickett and Dye, if they were to ever discover his embezzlement scheme.⁸⁰ If his
10 superiors confronted him about his embezzlement, Mr. DeLoach thought he could remind them
11 of their improper reimbursement activity and could say to them, "What are you going to do?"

⁷⁸ Agreed Statement of Facts of William Scott DeLoach, *U.S. v. DeLoach*, 06-CR-20583, at 3 (Sept. 28, 2006) ("DeLoach Statement of Facts").

⁷⁹ *Id.* at 5.

⁸⁰ See DeLoach Dep. at 55.

1 Call the authorities?"⁸¹ In addition, DeLoach stated that he felt more confident in the success of
2 his scheme given that PBSJ had kept all of its PAC accounts "off the books."⁸² Because the
3 investigation revealed that none of the other PBSJ officers had knowledge of Scott DeLoach's
4 embezzlement of \$36 million, the company had no knowledge that DeLoach was making these
5 reimbursements of political contributions with the embezzled funds as well.

6 **IV. LEGAL ANALYSIS**

7 **A. CONTRIBUTIONS MADE WITH CORPORATE FUNDS DRAWN FROM**
8 **OUT OF STATE PAC ACCOUNTS VIOLATED 2 U.S.C. § 441b**
9

10 The Act prohibits corporations from making contributions or expenditures from their
11 general treasury funds in connection with the election of any candidate for federal office, and
12 further prohibits corporate officers from consenting to such contributions. 2 U.S.C. § 441b(a).
13 The investigation revealed that senior officers of PBSJ created the Out of State PAC, which was
14 not an actual political committee registered with any government entity, but simply corporate
15 bank accounts used to make contributions to candidates outside of Florida. *See supra* Section
16 III.C. PBSJ made a total of \$9,750 in contributions to federal candidates with corporate funds
17 from the Out of State PAC accounts in violation of section 441b(a).

18 **B. REIMBURSEMENT OF CONTRIBUTIONS WITH CORPORATE FUNDS**
19 **VIOLATED 2 U.S.C. §§ 441b and 441f**
20

21 The Act prohibits a person from making a contribution in the name of another or
22 knowingly permitting his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.
23 Commission regulations provide that an example of making a contribution in the name of
24 another includes:

⁸¹ *Id.*

⁸² *See Mem. re: Interview with William Scott DeLoach, Aug. 27, 2008, at 6.*

(i) giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, or

(ii) making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

11 C.F.R. § 110.4(b)(2)(i)-(ii). Further, Commission regulations provide that no person shall assist in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii).

The investigation established that for over a decade, officers of PBSJ carried out a scheme in which they used corporate funds to reimburse themselves for contributions to federal candidates that they made in their own names. *See supra* Section III.D. PBSJ officers used corporate funds to reimburse a total of \$30,500 in contributions to federal candidates in violation of 2 U.S.C. §§ 441b(a) and 441f.⁸³

C. PBSJ IS LIABLE FOR THE ACTIONS OF ITS OFFICERS AND DIRECTORS

A corporation may be held liable for the acts of an employee within the scope of the employment and that benefit the corporate employer. *See United States v. Wallach*, 935 F.2d

⁸³ On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated section 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. However, the *O'Donnell* court's order is unlikely to be upheld on appeal because (1) it mistakenly assumes Section 441f prohibits all conduit contributions, including those reported under Section 441a(a)(8); (2) its analysis that the statutory construction of Section 441f is inconsistent with other provisions of the Act that explicitly identify "direct or indirect" contributions fails to realize that all "contribution in the name of another" are inherently indirect; and (3) it mischaracterizes the legislative history to support the conclusion that Section 441f does not prohibit the reimbursement of conduit contributions. *See* MUR 5818 (Feiger) General Counsel's Report #2 at 15; Memorandum re: Recommendation to Participate as Amicus Curiae in *United States v. O'Donnell*, No. 09-50296 (9th Cir.), dated July 21, 2009. The Commission has authorized the General Counsel to file an amicus curiae brief urging the Ninth Circuit to reverse the *O'Donnell* decision. Furthermore, since *O'Donnell*, the Commission has found violations of Section 441f in two enforcement matters involving reimbursement schemes. *See, e.g.*, MUR 5504 (Karoly); MUR 5818 (Feiger). Finally, the Southern District of Florida accepted a plea agreement providing that Scott DeLoach was guilty of violating section 441f by reimbursing his subordinates with embezzled funds, *see DeLoach Judgment*, and prosecutors relied upon the proposition that "reimbursed contributions" violated section 441f in their cases against Richard Wickett and Michael Dye. *See Wickett Indictment* at 3; *Dye Information* at 2.

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1 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedica of the Law of*
2 *Private Corporations* § 30 (Supp. 2004). When an agent acts within the scope of his authority, a
3 principal cannot escape responsibility on the grounds that he lacked knowledge of the agent's
4 actions, or that the agent's actions were unauthorized or unlawful. *See Local 1814, Int'l*
5 *Longshoremen's Ass'n v. NLRB*, 735 F.2d 1384, 1395 (D.C. Cir. 1984); *see also Beck v.*
6 *DeLoitte & Touche*, 144 F.3d 732, 736 (11th Cir. 1998) (stating knowledge of officer may be
7 imputed to corporation even if officer's misbehavior causes corporation's insolvency).
8 Furthermore, a corporation is liable for the bad acts of its agents, especially when "top
9 management" commits such acts. *Cenco Inc. v. Seidman & Seidman*, 686 F.2d 449, 456 (7th
10 Cir. 1982) (holding corporation liable for fraud committed on behalf of corporation by top
11 managers).

12 Indeed, in *United States v. Sun-Diamond Growers of California*, the D.C. Circuit applied
13 these general agency principals to hold a corporation liable for the actions of its Vice President,
14 who used corporate funds to reimburse campaign contributions in violation of 2 U.S.C.
15 §§ 441b(a) and 441f. 138 F.3d 961, 970 (D.C. Cir. 1998). Even though the Vice President
16 actually hid the reimbursement scheme from others, the court held the corporation liable because
17 the Vice President acted within the scope of his employment, which was to promote the
18 corporation's interests before the federal government, and undertook the scheme to benefit the
19 corporation. *Sun Diamond Growers*, 138 F.3d at 970. While the corporation was ultimately
20 disadvantaged by the Vice President's actions, the court found that so long as he was motivated
21 in part to benefit his employer, the Vice President's acts could be imputed to the corporation. *Id.*

22 The Commission also applied the principles of agency law to find corporate liability
23 based upon the actions of the President and Treasurer in MUR 5504 (Karoly). *See* MUR 5504,

1 General Counsel's Report #3 at 8. Because the officer was acting in his official capacity when
2 he approved the reimbursement of contributions, the Commission found that Karoly Law Offices
3 knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f. *See also* MUR 5390 (Freddie
4 Mac), General Counsel's Report #4 and Conciliation Agreement (finding corporation liable for
5 violation of § 441b based upon actions of corporate officers).

6 While three senior level PBSJ officers, Messrs. Dye, Wickett, and DeLoach, were
7 ultimately prosecuted for the making illegal contributions, as illustrated above in Sections III.C
8 and D, the making of illegal contributions was an "institutionalized" process that involved many
9 other officers throughout PBSJ.⁸⁴ The investigation showed that most senior officers and
10 directors were not only aware of the illegal contributions being made but also directed others in
11 the making of these contributions. In 2005, when the independent audit committee first
12 discovered the illegal contribution schemes, William Pruitt, the lead auditor questioned Mr.
13 Wickett, who replied to Pruitt that both the Out of State PAC and the reimbursement schemes
14 were "Company approved."⁸⁵ Based upon the information found through the investigation,
15 imputing the actions of these officers to the corporation is appropriate in this matter based on the
16 factors discussed below.

17 1. Officers Acted Within Their Scope of Employment

18 PBSJ officers acted within their scope of employment when they opened the Out of State
19 PAC accounts and made contributions to federal candidates from these accounts. Throughout his

⁸⁴ Transcript of Plea Colloquy, *U.S. v. Dye*, 07-CR-20144 (S.D. Fla. Aug. 3, 2007) at 35 ("The crime itself was institutionalized. Corporate accounts were created. Things were put in place that by their very definition, by their nature, were meant to exist over time and for a long time. . . . So for quite an extensive period of time, there was certainly no effort to correct what was institutionalized and ongoing.") (Assistant U.S. Attorney Karen Rochlin); Richard Wickett Response to Subpoena ("Wickett Subpoena Response") at 3 (describing reimbursement of campaign contributions as corporate "policy"); DeLoach Dep. at 32 ("It was more than just an occasional thing; it was certainly a pattern of reimbursement that I had looked at").

⁸⁵ See Email from Melissa Eubanks, May 6, 2005, Wickett Dep. Ex. 10 at PBPC17600.

1 career at PBSJ, Michael Dye was responsible for marketing and governmental affairs and largely
2 oversaw the political contribution process.⁸⁶ Because PBSJ only had a political committee
3 registered in Florida, Mr. Dye decided to create the accounts to make contributions outside of
4 Florida. Mr. Wickett acted in his capacity as CFO by making arrangements to open the Out of
5 State PAC accounts and signing the checks drawn on the accounts. As Scott DeLoach
6 subsequently rose within the company ranks to become Controller and ultimately the CFO, he
7 also obtained authority to oversee the accounts and sign checks.

8 PBSJ officers also acted within their scope of employment when they participated in the
9 reimbursement scheme. Senior level and mid-level officers have admitted that they believed that
10 making contributions on behalf of the company was part of their duties as officers and directors
11 of PBSJ.⁸⁷

12 In addition, PBSJ officers acted in their official capacities when following a formalized
13 approval process to make illegal campaign contributions. *See supra* Section III.D.1.⁸⁸
14 According to Richard Wickett, given that an employee could simply write his own personal
15 check to a candidate even if PBSJ did not have the appropriate PAC, the only reason why an
16 employee would seek approval for a contribution and "run it through the corporate chains was
17 for reimbursement."⁸⁹

⁸⁶ See Dye ROI at 1-2.

⁸⁷ See *supra* note 14;

⁸⁸ See also Larson ROI at 2 (stating he never submitted false mileage request for reimbursement without approval from supervisor), Breland ROI at 2; DeLoach Mem. at 4 (describing reimbursing scheme as "standard operating procedure" at PBSJ).

⁸⁹ Wickett Dep. at 74.

1 The process generally began when an employee received a solicitation from a candidate
2 or a client to support a candidate and subsequently filled out a contribution request form.⁹⁰ In the
3 early 1990s, the form would be sent to the Miami office where Michael Dye and/or Richard
4 Wickett would review and approve the request.⁹¹ Over time as PBSJ grew and increased its
5 political activities, regional and district managers were first required to approve the requests and
6 then forward the requests onto the CEO and/or the President who had the final approval. From
7 1996 through 2002, Michael Dye as President and CEO had the final approval for contributions,
8 then John Zumwalt from 2003 through 2005. *Id.* Once approval for a contribution had been
9 obtained, Richard Wickett as CFO, then Scott DeLoach, would have the check cut and sign it.⁹²

10 The contribution forms themselves did not reference a request for reimbursement, but
11 because employees were required to obtain corporate approval for contributions, they submitted
12 these forms.⁹³ If reimbursement were to take the form of a business expense, then Mr. Wickett
13 would create a fictitious expense request form so that the contributing officer would receive a
14 check. *See supra* Section III.D.1. If reimbursement were to take the form of a bonus, a manager
15 or "service director," whose normal responsibilities included determining a bonus for a

⁹⁰ *See* Contribution Form, *supra* note 51; Breland ROI at 3; Larson ROI at 3; Zumwalt ROI at 2. Employees generally submitted these forms to request that one of PBSJ's PACs make a contribution. Although PBSJ did not have a federal PAC until 2003, some employees used these forms to request that the corporation make a contribution to a federal candidate. These forms were required because each request had to be approved by a corporate officer and ultimately by the President/CEO of PBSJ. While PBSJ could not legally use corporate funds for federal contributions, employees did not consider the legality of the contributions when submitting these forms. Rather, they sought approval and expected reimbursement, as explained by Richard Wickett, the CFO. *See supra* p.25.

⁹¹ Zumwalt ROI at 2. However, Mr. Wickett contends that he did not actually approve any contribution requests. Only after the CEO approved a contribution request was Mr. Wickett consulted for the purpose of cutting a reimbursement check. Wickett Dep. at 76-79.

⁹² *See* Wickett Dep. at 79; *see also* DeLoach Dep. at 39 ("Mike Dye being the person that authorized just the fact that they were going to be done – there was going to be reimbursement in some form – and left it up to Richard Wickett to handle the specifics of it.").

⁹³ PBSJ was careful to hide the reimbursements from the balance sheets by masking the reimbursements as a business expense or a bonus. While PBSJ sought to conceal the true nature of expense forms and corporate checks given that these would be reviewed by outside auditors, the contribution request forms would not be reviewed by these auditors given that they were supposedly PAC activities that did not involve corporate funds. *See* DeLoach Dep. at 51-53 (testifying outside the auditors did not review PBSJ PAC accounts).

1 subordinate, would inform Richard Wickett, who as CFO accumulated the bonus data, that a
2 subordinate's bonus should be increased based upon the subordinate's making a political
3 contribution.⁹⁴

4 In addition, PBSJ followed the same contribution request process when making
5 contributions through the Out of State PAC accounts. For example, in 1997, Jose B. Gonzalez, a
6 Senior Vice President, submitted a contribution request form for a federal contribution to the
7 Bud Schuster for Congress Committee, although PBSJ had no federal PAC at the time.⁹⁵ Robert
8 Paulsen, his supervisor, approved the request and then submitted it to Michael Dye, who as
9 President and CEO had final approval authority. Once all required approvals had been received,
10 as Assistant Controller, Scott DeLoach signed the check drawn on the Out of State PAC
11 account.⁹⁶

12 2. Officers Acted to Benefit PBSJ

13 PBSJ officers acted to benefit PBSJ when they made corporate contributions and
14 authorized and/or accepted reimbursements. The investigation revealed that political
15 contributions were an important part of PBSJ's business strategy given that PBSJ sought to
16 obtain business from government entities. *See supra* Section III.A. Respondents and witnesses
17 stated that PBSJ frequently received requests from clients to make political contributions on

⁹⁴ See Wickett Dep. at 205-208; DeLoach Dep. at 85.

⁹⁵ CATPAC Contribution Request Form, DeLoach Dep. Ex. 21, PAC02212. While the Bud Shuster for Congress Committee returned the Out of State PAC check, Jose Gonzalez and Robert Paulsen subsequently sent personal checks of \$500 each to the Committee, and these checks were part of company records. Based on the evidence indicating that these officers sought company approval for this contribution, we believe that they were ultimately reimbursed for this contribution given that bonus calculation documents indicate that Paulsen received an upward adjustment of \$1,000 to his bonus in 1997 and Gonzalez received an upward adjustment of \$500 to his bonus in that same year. *See* PBS&J, Inc. FY 97 Bonus Input, DeLoach Dep. Ex. 28, PBPC0395038; PBS&J, Inc. FY 97 Incentive Bonus Input, DeLoach Dep. Ex. 30, PBPC0382233. Furthermore, had Gonzalez or Paulsen simply desired to make personal contributions, they would not have sought company involvement and there appears to be no legitimate reason why the company would keep copies of their personal checks. *See also* DeLoach Dep. at 66 (stating that Gonzalez and Paulsen were most likely reimbursed for these contributions).

⁹⁶ *Id.*

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1 behalf of certain candidates, and political contributions were made with the expectation that
2 PBSJ would obtain access to important government decision makers.⁹⁷ Indeed, Michael Dye
3 admitted that he told his employees that while making political contributions were voluntary,
4 employees should use portions of their bonuses to make contributions if they wanted to see the
5 company grow.⁹⁸ In addition, James Breland stated that a PBSJ client solicited him to make the
6 Max Cleland contribution for which he was reimbursed.⁹⁹ According to Larry Boatman, the
7 decision to make a political contribution was based on whether there was a business purpose, a
8 relationship beneficial to the company, or if the company was invited to the fundraising event.¹⁰⁰

9 **3. Officers at the Highest Level of PBSJ Were Involved**

10 The investigation revealed that officers at the highest level of PBSJ participated in the
11 making of corporate contributions through the Out of State PAC and the reimbursement of
12 contributions with corporate funds. Senior officers, including William Randolph (former
13 Chairman), Michael Dye (Executive Vice President), Richard Wickett (Controller), Scott
14 DeLoach (Assistant Controller), were all involved in establishing and operating the Out of State
15 PAC account. *See supra* Section III.C. The investigation also revealed that knowledge of the
16 Out of State PAC was not just limited to these officers but other officers as well, including other
17 members of PBSJ's Board of Directors and CEO John Zumwalt. *Id.* In addition, officers at the

⁹⁷ See, e.g., Mem. from John Zumwalt, April 2, 2003, DeLoach Dep. Ex. 54 (stating "PAC money . . . allows us access when we, or our clients, need to be heard."); Homan ROI at 5 (stating PBSJ had general practice to support candidates who had influence in appropriating money for projects that would generate business).

⁹⁸ Dye ROI at 7.

⁹⁹ See Breland ROI at 2; *see also* Boatman ROI at 2 (stating that with respect to the \$500 contribution to Representative Don Young, Richard Wickett asked him to attend the fundraiser for Representative Young on the company's behalf):

|; Letter from John T. Spillman with handwritten notes, PBPC0009684-685 (describing \$500 contribution to Bob Carr who was "currently congressman on approp. comm., just approved \$25 million in new Tri-Rail Appr.").

¹⁰⁰ See Boatman ROI at 2.

1 highest level both authorized and received reimbursements for political contributions.
2 Documentary and testimonial evidence indicated that high level officers and directors, including
3 Michael Dye, Richard Wickett, and John Zumwalt, authorized contribution requests that were to
4 be reimbursed, and Richard Wickett signed the reimbursement checks. *See supra* Section III.D.

5 4. No Corporate Liability for Reimbursement of Contributions with Embezzled
6 Funds
7

8 The investigation revealed that none of the other PBSJ officers knew that Scott DeLoach
9 was embezzling company funds prior to the discovery in 2005, and Scott DeLoach's
10 reimbursement of political contributions with embezzled funds was not part of the corporate-
11 wide reimbursement scheme discussed above. Scott DeLoach was not acting within the scope of
12 his responsibilities as CFO when he reimbursed his subordinates for political contributions with
13 embezzled funds. Although officers were expected to make political contributions on behalf of
14 PBSJ and were authorized to obtain reimbursements through PBSJ's formalized contribution
15 request process, Mr. DeLoach did not follow this process and executed these reimbursements by
16 issuing checks from his own personal bank account containing stolen funds, not with company-
17 approved checks. Although the evidence indicates that PBSJ may have created the conditions
18 for the embezzlement by establishing PAC accounts that did not appear on PBSJ's balance
19 sheets, we do not recommend that PBSJ be held liable for DeLoach's reimbursement of political
20 contributions with the embezzled funds.

21 D. VIOLATIONS WERE KNOWING AND WILLFUL
22

23 The phrase "knowing and willful" indicates that "acts were committed with a knowledge
24 of all the relevant facts and a recognition that the action is prohibited by law" H.R. Rpt. 94-
25 917 at 3-4 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election Campaign Act
26 Amendments of 1976 at 803-04 (Aug. 1977)); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101

1 (D.C. Cir. 1980) (stating that "knowing and willful" means "'defiance' or 'knowing, conscious,
2 and deliberate flaunting' of the Act").

3 During the investigation, we discovered numerous memoranda that indicated officers of
4 PBSJ had knowledge that making corporate contributions and the reimbursement of
5 contributions were not legal. As early as 1984, then President Jim Glass and Michael Dye
6 received legal advice that informed them the reimbursement of contributions was illegal and
7 recommended the formation of registered political committees.¹⁰¹ In 1986, Mr. Dye
8 subsequently consulted Mr. Glass on a question and answer sheet, entitled "CATPAC
9 Questions," regarding PBSJ's Florida CATPAC.¹⁰² This document stated that contributions
10 made to federal candidates must be made in compliance with the federal election laws and that
11 employees could not be reimbursed for political contributions.¹⁰³

12 In 1996, PBSJ's Board of Directors passed a company-wide ethics policy, which stated
13 that "Company funds shall only be used for lawful purposes."¹⁰⁴ In 1997, John Zumwalt, who
14 was then the District Director of West Florida, circulated a memorandum that reminded
15 subordinates of the policy and indicated that this policy applied to campaign finance.¹⁰⁵ The
16 memorandum also stated, "Campaign laws prohibit any employee from making a campaign
17 contribution and subsequently entering same on employee's expense report. Any such
18 contribution would be deemed a contribution by the corporation and, therefore, should be

¹⁰¹ See Memorandum to Mr. Jim Glass from William J. Roberts, July 6, 1984, PBPC0378890-891.

¹⁰² See CATPAC Questions, PBPC0050690-691.

¹⁰³ *Id.*

¹⁰⁴ Mem. from John B. Zumwalt, III, October 27, 1997, PBPC0000534.

¹⁰⁵ *Id.*

1 identified as such when made. . . . All personal contributions must be provided from the
2 employees [sic] personal discretionary income."¹⁰⁶

3 In February 1999, Michael Dye circulated a memorandum to PBSJ's Service Directors
4 and District Directors to remind them that PBSJ only had a Florida state PAC but that plans were
5 being made to register other state PACs. Mr. Dye also stated, "[a]s a company, we do not have a
6 federal pac [sic]. All donations to federal candidates are made on an individual's preference and
7 at their personal expense."¹⁰⁷ The following year, Mr. Dye sent another memorandum notifying
8 PBSJ managers that the company had established political committees in other states besides
9 Florida but informed them that state committee funds could not be used for federal
10 contributions.¹⁰⁸ Mr. Dye concluded by stating, "The Citizens and Taxpayers Political Action
11 Committees are the only source of financial commitment that will be made by PBSJ. If an
12 individual decides to make a personal contribution, that is his/her choice, but the company will
13 not participate in any reimbursement of that contribution."¹⁰⁹

14 When John Zumwalt became CEO in 2002, he sought to promote more transparency in
15 the political contribution process at PBSJ and instituted a new program for officers to contribute
16 to company-sponsored political committees.¹¹⁰ The company also registered a federal committee
17 with the Commission in April 2003. In a 2003 memorandum concerning PBSJ's new program,
18 Zumwalt stated, "Company sponsored, political action committees are to be funded on a totally
19 voluntary basis with your non-reimbursable money."¹¹¹

¹⁰⁶ *Id.*

¹⁰⁷ Mem. from Mike Dye, Feb. 18, 1999, Wickett Dep. Ex. 22, PBPC0395467.

¹⁰⁸ Mem. from H. Michael Dye, April 27, 2000, Wickett Dep. Ex. 23, PBOC0000869.

¹⁰⁹ *Id.*

¹¹⁰ Zumwalt ROI at 8.

¹¹¹ Mem. from John Zumwalt, April 2, 2003, PBPC0124645-648 (emphasis in original).

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1 Most individual respondents and witnesses claimed that they did not know that
2 reimbursements were illegal at the time that they received or authorized reimbursements.¹¹²
3 Some individuals discovered the illegality of reimbursements on their own.¹¹³ Other individuals
4 stated that they did not realize the illegality until 2005 when the independent audit committee
5 began an inquiry into the political contribution process at PBSJ and the ensuing FBI
6 investigation.¹¹⁴ Despite the statements of these individuals, internal memoranda, described
7 above, indicate that dating back from the 1980s, officers of PBSJ had knowledge that
8 reimbursements were illegal and that PBSJ had instituted a policy that prohibited
9 reimbursements and required that all contributions be made in compliance with federal campaign
10 finance law. In fact, although numerous individuals expressed concern over the legality of the
11 reimbursement scheme, the scheme continued until 2004.¹¹⁵ One witness, Albert White, PBSJ's
12 former Controller, who told Mr. Wickett that the reimbursements were wrong, believed that his
13 refusal to participate resulted in reduced bonuses and limited his ability to advance in the
14 company.¹¹⁶

15 Finally, PBSJ's attempts to conceal the true source of funds used to make contributions
16 both through the reimbursement scheme and the Out of State PAC account further indicate that
17 PBSJ's actions were knowing and willful. *See United States v. Hopkins*, 916 F.2d 207, 213-14
18 (5th Cir. 1990) (holding that taking steps to disguise the source of funds used in illegal activities
19 might reasonably be explained as a "motivation to evade lawful obligations." (citing *Ingram v.*
20 *United States*, 360 U.S. 672, 679 (1959))). While a section 441f violation is inherently self-

¹¹² See, e.g., Wickett Dep. at 51; Dye ROI at 2;

¹¹³ See, e.g., [redacted] Shearer ROI at 4.

¹¹⁴ See, e.g., Squillante ROI at 3.

¹¹⁵ Zumwalt ROI at 4.

¹¹⁶ White ROI at 2.

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1 concealing, in that the true source of funds is withheld from the recipient committee, PBSJ took
2 further steps to conceal its illegal actions by authorizing employees to submit fictitious expense
3 reports to obtain reimbursement and hiding reimbursements through the bonus system.
4 Furthermore, by removing information identifying PBSJ as the contributor from the Out of State
5 PAC checks and keeping the accounts off the books, PBSJ sought to conceal the true source of
6 funds for contributions made through these accounts.

7 **E. CONCLUSION**

8 As discussed above, the Commission's investigation revealed that PBSJ used its
9 corporate funds to make direct corporate contributions to federal candidates in violation of 2
10 U.S.C. § 441b(a) and engaged in an institutionalized, corporate-wide practice of reimbursing
11 employee contributions with corporate funds in violation of 2 U.S.C. §§ 441b(a) and 441f.
12 Furthermore, the investigation revealed that PBSJ took efforts to conceal its illegal conduct from
13 government entities and outside auditors by removing the corporate name from contribution
14 checks drawn on corporate accounts and masking reimbursements of contributions through such
15 mechanisms as the fictitious expense reports and the bonus system. We therefore recommend
16 that Commission enter into pre-probable cause conciliation with PBSJ.

17 With respect to the individual respondents, however, we recommend that the
18 Commission take no further action for the reasons set forth below.

19 **1. Corporate Officers and Managers**

20 Michael Dye, Richard Wickett, and Scott DeLoach, who were all senior level officers and
21 directors of PBSJ, were subject to criminal prosecution and convicted for their involvement in
22 the illegal contribution schemes at PBSJ. Michael Dye was sentenced to six months of home

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1 detention and was ordered to pay a criminal fine of \$20,000.¹¹⁷ Richard Wickett was sentenced
2 to six months of home detention and was ordered to pay a criminal fine of \$40,000.¹¹⁸ Scott
3 DeLoach received a heavier sentence based upon his embezzlement of PBSJ funds, and received
4 a criminal sentence of 52 months in prison and was ordered to pay restitution of
5 \$18,979,473.98.¹¹⁹ Although these individuals were lead decision makers in PBSJ's use of the
6 Out of State PAC accounts to make direct corporate contributions and the reimbursement
7 scheme, we do not believe that pursuing these individuals would be a prudent use of Commission
8 resources because they have already been punished criminally for their wrongdoing, and these
9 respondents cooperated extensively to provide us with information on the corporate-wide
10 practices pertaining to political contributions at PBSJ. *See* MUR 5871 (Noe) (Commission
11 declined to take further action based upon respondent's substantial criminal punishment).¹²⁰
12 Thus, we recommend that the Commission take no further action as to Michael Dye, Richard
13 Wickett, and Scott DeLoach but issue the appropriate cautionary letters.

14 While James Breland and Larry Boatman were also officers of PBSJ, they were not part
15 of the senior management, who had ultimate approval authority in the political contribution and
16 reimbursement process. In addition, their reimbursements for federal contributions were limited
17 to one-time incidents, and they were cooperative during the investigation. Thus, we recommend
18 that the Commission take no further action as to James Breland and Larry Boatman but issue
19 appropriate cautionary letters.

¹¹⁷ Dye Judgment, *supra* note 21.

¹¹⁸ Wickett Judgment, *supra* note 21.

¹¹⁹ DeLoach Judgment, *supra* note 21; Order Granting Government's Mot. for Reduction of Sent., *U.S. v. DeLoach*, 06-CR-20583 (May 12, 2008) (reducing term of imprisonment from 97 to 52 months).

¹²⁰ Cf. MUR 5504 (Karoly) (Commission found probable cause to believe that President of law firm violated sections 441b and 441f and authorized referral to DOJ); MUR 5666 (MZM) (Commission entered into pre-probable cause conciliation containing civil penalty of \$1 million with President and corporation where President had yet to be criminally sentenced).

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1 The investigation revealed that Maria Garcia and Rosario Licata, who were managers in
2 PBSJ's accounting department, assisted Scott DeLoach in the embezzlement of company funds
3 and also permitted DeLoach to use their names for contributions to federal candidates in
4 violation of 2 U.S.C. § 441f. Furthermore, Licata at the direction of Richard Wickett helped
5 administer the illegal contribution schemes. *See supra* Section III.C. However, given these
6 respondents have been criminally sentenced for their roles in the embezzlement, *see supra* n.77,
7 and were acting as subordinates of Wickett and DeLoach when they agreed to participate in the
8 illegal contribution schemes, we recommend taking no further action as to Maria Garcia and
9 Rosario Licata but issue appropriate cautionary letters.

10 2. Conduits

11 The investigation confirmed that the remaining respondents, Shannan Ighodaro, Sybil
12 Thomas, Lourdes Fernandez, Reinaldo Fernandez, Ana Quinones, Victor Quinones, violated 2
13 U.S.C. § 441f by allowing their names to be used for contributions to federal candidates.
14 However, these respondents were not officers of the company but mid-level managers or rank-
15 and-file PBSJ employees (or spouses of such employees). They appeared to be complying with
16 DeLoach's requests and were reimbursed with embezzled funds. Consistent with the
17 Commission's prior practice with respect to subordinate conduits, *see, e.g.*, MUR 5871 (Noe);
18 MUR 5504 (Karoly); MUR 5666 (MZM), we recommend that the Commission take no further
19 action as to these respondents but issue appropriate cautionary letters.

20 V. CONCILIATION AND CIVIL PENALTY

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**MUR 5903 (PBS&J Corp.)
General Counsel's Report #2**

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**MUR 5903 (PBS&J Corp.)
General Counsel's Report #2**

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2 **VI. RECOMMENDATIONS**


- 3 1. Enter into conciliation with PBS&J Corporation prior to a finding of probable
4 cause;
- 5 2. Take no further action with respect to H. Michael Dye, Richard Wickett, William
6 Scott DeLoach, Maria Garcia, Rosario Licata, Shannan Ighodaro, Sybil Thomas,
7 Lourdes Fernandez, Reinaldo Fernandez, Ana Quinones, Victor Quinones, James
8 Breland, and Larry Boatman, send cautionary letters, and close the file as to them;
9 and
- 10 3. Approve the attached conciliation agreement.

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13 Date

9/21/09

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